

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

PERCY L. OLIVER §  
VS. § CIVIL ACTION NO. 1:09cv269  
UNITED STATES OF AMERICA §

MEMORANDUM ORDER  
ADOPTING THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Percy L. Oliver, an inmate confined within the Bureau of Prisons, proceeding *pro se*, filed the above-styled motion to vacate, set aside or correct sentence. The court referred the matter to the Honorable Earl S. Hines, United States Magistrate Judge, for consideration pursuant to applicable orders of this court.

The magistrate judge has submitted a Report and Recommendation of United States Magistrate Judge concerning this case. The magistrate judge recommends the motion to vacate, set aside or correct sentence be denied.

The court has received and considered the Report and Recommendation of United States Magistrate Judge, along with the record and pleadings. No objections were filed to the Report and Recommendation.

ORDER

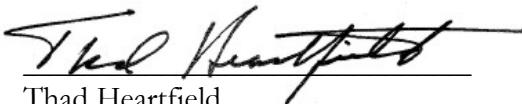
Accordingly, the proposed findings of fact and conclusions of law of the magistrate judge are correct and the report of the magistrate judge is **ADOPTED**. A final judgment will be entered denying this motion to vacate, set aside or correct sentence.

In addition, the movant is not entitled to the issuance of a certificate of appealability. An appeal from a judgment denying federal habeas relief may not proceed unless a judge issues a certificate of appealability. *See U.S.C. § 2253*. The standard for granting a certificate of appealability requires a movant to make a substantial showing of the denial of a federal constitutional right. *See Slack v. McDaniel*, 529 U.S. 473, 483-84; *Elizalde v. Dretke*, 362 F.3d

323, 328 (5<sup>th</sup> Cir. 2004). In making a substantial showing, the movant need not establish that he should prevail on the merits. Rather, he must demonstrate that the issues are subject to debate among jurists of reason, that a court could resolve the issues in a different manner, or that the questions presented are worthy of encouragement to proceed further. *Slacke*, 529 U.S. at 483-84; *Avila v. Quarterman*, 560 F.3d 299, 304 (5<sup>th</sup> Cir. 2009). Any doubt regarding whether to grant a certificate of appealability should be resolved in favor of the movant. See *Miller v. Johnson*, 200 F.3d 274, 280-81 (5<sup>th</sup> Cir.), cert. denied, 531 U.S. 849 (2000).

In this case, the movant has not shown that any of the issues raised by his claims are subject to debate among jurists of reason. In addition, the questions presented are not worthy of encouragement to proceed further. As a result, a certificate of appealability shall not be issued.

**SIGNED** this the 7 day of January, 2011.



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Thad Heartfield  
United States District Judge